

1                   Remarks

2                   A restriction requirement has been imposed on the Applicants under 35 U.S.C.  
3                   121, in accordance with which the Applicants are required to elect a single disclosed  
4                   species for prosecution on the merits to which the claims shall be restricted if no generic  
5                   claim is finally held allowable. The Examiner states that, currently, none of the claims  
6                   are generic.

7                   The Examiner further states that the application contains claims directed to the  
8                   following patentably distinct species of the claimed invention: Species 1, shown in figure  
9                   3; Species 2, shown in figures 4-8, Species 3, shown in figures 9-10; and, Species 4,  
10                  shown in figures 11-18.

11                  The Applicants hereby elect Species 4 shown in figures 11-18 with traverse on  
12                  the grounds that: 1) a *prima facie* case for restricting the claims of the application has  
13                  not been established; and, 2) the claims do not meet the general test as to when claims  
14                  are restricted. Furthermore, the Applicants contend that all claims are readable on the  
15                  elected species.

16                  In regard to the first ground for traverse, ". . . the examiner, in order to establish  
17                  reasons for insisting upon restriction, must show by appropriate explanation one of the  
18                  following: (A) Separate classification thereof . . . (B) A separate status in the art when  
19                  they are classifiable together . . . (C) A different field of search . . ." (MPEP 808.02.)

20                  Upon careful review of the Office action, the Applicants find no such explanation  
21                  as required, and therefore contend that a *prima facie* case for requiring a restriction of  
22                  the claims has not been established.

23                  In regard to the second ground for traverse, "[c]laims to be restricted must be  
24                  mutually exclusive." (MPEP 806.04(f).) Stated otherwise, ". . . claims to be restricted to  
25                  different species must recite the mutually exclusive characteristics of such species."  
(Id.)

26                  The Applicants contend that none of the claims are mutually exclusive.  
27                  Therefore, the Applicants contend that the claims do not meet the general test as to  
28                  when claims may be properly restricted.

29                  Moreover, "[w]here the claims of an application define the same essential  
30                  characteristics of a single disclosed embodiment of an invention, restriction  
31                  therebetween should never be required." (MPEP 806.03).

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The Applicants contend that all of the claims define the same essential characteristics of a single disclosed embodiment of the invention as shown in figures 11-18, and thus, all claims are readable on the elected species.

Lastly, in regard to ". . . passing upon questions of . . . restriction, it is the claimed subject matter that is considered and such claimed subject matter must be compared . . ." (MPEP 806.01.)

It appears to the Applicants that the imposition of the restriction requirement has been based not on the claimed subject matter, but only on the subject matter disclosed in the figures alone. Thus, the Applicants contend that the restriction requirement does not have proper basis.

Accordingly, for the reasons set forth above, the Applicants respectfully contend that the restriction requirement has not been properly established, and therefore respectfully request that the restriction requirement be withdrawn.

## Summary

The Applicant believes that this response constitutes a full and complete reply to the Office action, and the Applicant furthermore requests timely allowance of claims 1-8, 10-16, and 21-22. The below-signed attorney respectfully requests that, in the event that the next Office action is anything other than a Notice of Allowance for claims 1-8, 10-16, and 21-22, the Examiner call him before issuing the action.

Respectfully submitted,

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Response to Restriction Requirement*